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May 23, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 20, 2005

Case Number: TSO-0299

This Decision concerns the eligibility of xxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

On July 28, 2005, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization." Hereinafter the "information statement." The information statement indicates three security concerns.

The first security concern arises from the individual's failure to accurately report two items on his 2003 Questionnaire for National Security Position (QNSP). The first item he failed to report was his leaving a job after being told he would be fired. The second item he failed to report was a November 2000 Driving Under the Influence (DUI) arrest. The information statement indicates that a failure to provide accurate information on a QNSP raises a falsification security concern under Criterion F. 10 C.F.R. § 710.8 (f).

The second security concern specified in the information statement relates to the individual's failure to pay his creditors. The statement indicates that a failure to pay creditors raises a financial irresponsibility security concern under criterion L. 10 C.F.R. § 710.8 (l).

The third security concern specified in the information statement relates to the individual's consumption of alcohol. That statement is based on a DOE consulting psychiatrist evaluation report. DOE Exhibit # 5. However, that consulting Psychiatrist is no longer available for DOE hearings. Therefore, the DOE had the individual examined by a DOE consulting psychologist. The DOE consulting psychologist's January 25, 2006 evaluation report diagnosed the individual with Alcohol Related Disorder, Not Otherwise Specified. DOE Exhibit #21. Those diagnoses raise a security concern under Criterion J. 10 C.F.R. § 710.8 (j).

The notification letter informed the individual that he was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing). The only testimony at the hearing was from the individual himself and from the DOE consulting psychologist.

II. HEARING

A. The DOE Consulting Pyscologist

The DOE consulting psychologist testified that the individual told her that he started consuming alcohol when he was 18 years old. In 2000, at the age of 39, the individual was arrested for DUI. Tr. at 12. She testified that

. . . he has indicated he does not drink and drive since [2000]. [The individual] told me currently, at the time of the evaluation, he would drink between 18 and 30 beers on the weekend, and usually drinks a six-pack of beer during a football game. If there were two football games on during that day, he would drink two six-packs of beer. Sometimes it takes him eight beers to become intoxicated and he could become intoxicated as much a three times a week on the weekend. He has three-day weekends sometimes.

Tr. at 12.

The DOE consulting psychologist indicated that there have been times when the individual controlled his alcohol consumption.

He has some control over his alcohol use. By his report, there was a period of about seven years that his alcohol consumption was quite reduced, and he said he is able to defer when his son has sports activities. So that . . . is a hopeful sign.

Tr. at 14.

She summarized

There seems to be a pattern of sometimes heavy drinking and sometimes light drinking, and then sometimes heavy drinking again, especially in response to stress. [The individual's] current home situation, or home situation at the time of the evaluation, was considered stressful, so his alcohol consumption is high. After his divorce he had several weeks when he was drinking very heavily.

Tr. at 13.

The DOE consulting psychologist testified that the individual does not meet the criteria for alcohol

dependence or alcohol abuse. See Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revision (DSM-IV). Tr. at 14. She testified that she diagnosed him with “alcohol related disorder, not otherwise specified.” Tr. at 14.

She believes for the individual to demonstrate rehabilitation he should receive treatment and be abstinent for one year. Tr. at 15.

B. The Individual

The individual testified briefly about the concerns in this proceeding.

1. Failure to Report

The individual testified that in 1997 his previous employer “allowed me to resign” rather than be dismissed. Tr. at 21.

2. Financial Problems

The individual testified that losing his job in 1997 really hurt him financially. In 1998, soon after he resigned, he filed for bankruptcy. Tr. at 21. The bankruptcy was dismissed in 1999 after he failed to make required payments to his creditors. Tr. at 31. In October 2000 he told the DOE that he intended to pay his debts. Tr. at 33. He went to credit counseling and developed a plan to pay his creditors. He testified that he did not follow the plan because

it was too hard. I could not get a hold of the right people, making calls all day. For instance, [I would go to a] bank where they closed out [the account] and then it got turned over to somebody else, and I just couldn’t follow a path to get to the end of who had the debt and who would I pay.

Tr. at 33.

The individual discussed the outstanding balances of the creditors listed on his current credit report. DOE Exhibit #23. He testified that the first creditor on the report has not been paid. Tr. at 23. He recently made a \$200 payment to the second creditor. The third creditor financed his car loan. He testified that he is current on that debt. The fourth creditor was a finance company. The individual testified that he made last month’s and the current month’s payments on the previous Friday. Tr. at 23. He indicated that two other creditors (auto recovery and the power company) have not been paid. Tr. at 24. He testified that he believes he is currently living within his means. Tr. at 28.

3. Alcohol Consumption

The individual testified that he consumed six beers on the Sunday before the hearing. Tr. at 30. He testified that he plans to stop consuming alcohol. Tr. at 30.

III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995).

B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

IV. ANALYSIS

It is clear that the individual failed to report items on his QNSP, has a pattern of failing to pay his debts, and has been diagnosed with an alcohol related disorder. These facts raise security concerns which the individual has the burden of resolving.

The individual provided no mitigating arguments for his failure to report leaving his job in 1997 and his DUI arrest. With respect to his financial problems, the individual's sole mitigating argument was his statement that he is currently living within his means. This does not excuse his failure to pay his past debts. Moreover, his review of his current credit report indicates that he currently has unpaid financial obligations. Further, I find that the individual has not provided any support for his position that he is currently living within his means, nor has he provided any basis to believe he will in the future pay his debts. Therefore, the individual has not mitigated the financial irresponsibility security concern.

Finally, with respect to the alcohol related security concern, the DOE consulting psychologist cogently explained the basis for her diagnosis of an alcohol related disorder and the reasons for her recommendation that in order to demonstrate rehabilitation the individual should receive treatment and maintain a one year period of abstinence. Tr. at 15. This was very convincing and not disputed by the individual. In fact, the individual testified that he continues to consume alcohol on a regular basis. He attempted to mitigate the concern by asserting that he plans to stop consuming alcohol. When asked "Have you ever tried to quit before?" he replied

I wouldn't say I've tried to quit. I would say that there are periods where I don't drink. It's not like I'm going – like, if I'm doing other things, then that's not part of my planned activity, like sporting events or football that I do with my son, or when I helped coach when he played basketball when he was in fourth or fifth grade and that kind of stuff. I didn't – you know, I wouldn't come home and drink a 12-pack after basketball practice, that kind of thing. I really don't have much – I think I'm pretty much done[with testifying].

Tr. at 31.

In my view this response is typical of the testimony of the individual. During his testimony at the hearing the individual was unable to describe in a coherent manner his past consumption of alcohol or his future intentions with regard to the use of alcohol. I therefore give his statements that he plans to stop consuming alcohol no credence here. Furthermore, the individual presented no information to support his testimony that he will stop consuming alcohol. Therefore, the individual has failed to convince me that he will cease consuming alcohol. Since that is his sole mitigating argument, I find that the individual has not mitigated the security concern related to the DOE consulting psychologist's diagnosis of an alcohol related disorder.

V. CONCLUSION

As is evident from the above discussion I find the individual has presented no information to mitigate the concerns raised in the notification letter. Therefore, I have concluded that the individual has not mitigated the DOE security concerns under Criteria F, L and J of 10 C.F.R. § 710.8. In view of the record before me, I am not persuaded that restoring the individual's access authorization would not endanger the common

defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker
Hearing Officer
Office of Hearings and Appeals

Date: May 23, 2006